

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: AT&T COMMUNICATIONS OF THE MIDWEST, INC.	DOCKET NO. RPU-99-3
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**ORDER REJECTING TARIFF PAGES, REQUIRING REVISIONS,
AND APPROVING REMAINDER OF TARIFF**

(Issued June 12, 2000)

On May 28, 1999, AT&T Communications of the Midwest, Inc. (AT&T), filed with the Utilities Board (Board) a proposed access and network interconnection services tariff. Corrections to the tariff were filed by AT&T on June 15, 1999. On June 11, 1999, U S WEST Communications, Inc. (U S West), filed objections to the proposed tariff and asked that it be suspended, a contested case proceeding be initiated, and AT&T be required to file cost studies and modify its tariff to match existing interconnection agreements.

On June 25, 1999, the Board docketed AT&T's proposed tariff for further investigation and directed AT&T to file a response to the U S West objections. The Board gave U S West (and any other interested person) the opportunity to reply to AT&T's response. AT&T filed its response on July 9, 1999, and U S West filed a reply on July 22, 1999. Finally, on May 9, 2000, AT&T filed amended tariff pages intended to address one of the issues, relating to reciprocal pricing. Each of the issues and arguments is individually discussed below.

1. Conflict with interconnection agreements. (Tariff Section 1.1.1)

U S West generally objects that many of the provisions of AT&T's proposed tariff are inconsistent with the terms and conditions of the interconnection agreement between U S West and AT&T. (Objection, ¶¶ 8-10, 12.) U S West argues that the FCC requires that the terms and conditions for transport and termination of traffic must be reciprocal. (Objection, ¶ 6.)

AT&T argues that § 1.1.1 of the proposed tariff clearly provides that if the tariff is inconsistent with the terms and conditions of an interconnection agreement, the interconnection agreement is controlling. (Response, pp. 1-2.) That section provides:

To the extent that the terms of this tariff are inconsistent with the terms of any Interconnection Agreement between the Company and any Carrier, the terms of such Interconnection Agreement shall govern (except as otherwise provided in such Interconnection Agreement).

AT&T also argues that the FCC reciprocity requirement applies only in the context of arbitration proceedings or Bell operating company (BOC) statements of generally available terms and conditions, not to state tariff filings by non-BOC entities. (Response, pp. 2-3.) Finally, AT&T asserts that most of its proposed rates are comparable to the rates charged by U S West, as shown on U S West's effective tariff library website. (Id.)

U S West replies that the FCC reciprocity requirement is intended to apply to all rates for transport and termination of traffic and that the rates AT&T is comparing

from U S West's web site are access charges exclusively for termination of toll traffic, not for the exchange of local traffic. (Reply, ¶¶ 2, 3.) U S West does not respond to AT&T's argument that § 1.1.1 of the proposed tariff eliminates any possible conflict between the tariff and an interconnection agreement.

The Board finds that § 1.1.1 of the proposed tariff makes it clear that, in the event of inconsistency, any approved interconnection agreement will take precedence over the tariff. This makes U S West's objections moot on this issue, at least as applied to U S West, which has an approved interconnection agreement with AT&T. The Board will deny the objection and accept the proposed tariff language, subject to complaint or investigation.

2. Tariff language issues.

a. Definition of "access service." (Section 2.7)

U S West objects that the proposed tariff is unclear whether the definition of "access service" includes the ability to terminate or originate interexchange calls. (Objection, ¶ 3.)

AT&T responds that it will revise the applicable language to more clearly reflect the nature of its offered service. (Response, p. 4.)

U S West replies that it renews its objection until such time as AT&T files revised language. (Reply, ¶ 7.)

The Board will reject proposed tariff page 44, which includes the definition of "access service," and will require AT&T to submit for Board review a revised page

that more clearly describes its access service. The revised page must be filed within 30 days of the date of this order.

b. Definition of interconnection agreement. (Section 2.7)

U S West objects to the proposed definition of "interconnection agreement," also set forth in Section 2.7 at page 48, arguing an agreement could address many issues other than the limited class of services included within the AT&T definition. (Objection, ¶ 4.)

AT&T responds the definition is not exclusive and does not prohibit an interconnection agreement from addressing any issues the parties may find appropriate. (Response, p. 4.)

U S West replies that AT&T should be required to improve the definition and clarify that other issues may be addressed in an interconnection agreement. (Reply, ¶ 8.)

The Board finds that AT&T's proposed language is substantially consistent with Board rules. U S West has not established that the proposed language is illegal or against the public interest. Instead, U S West has only opined that the language could be improved. Because the provision substantially complies with applicable rules, the Board will approve the language proposed by AT&T, subject to complaint or investigation.

c. Interruption period. (Section 2.4.5)

U S West objects to the provision of AT&T's proposed tariff relating to credits for extended interruptions of service. (Objection, ¶ 5.) The proposed language says the interruption period begins when AT&T is notified of the interruption; U S West says the interruption period should also begin when AT&T detects the interruption, if it does so without notice from the customer. U S West argues this is required by 199 IAC 22.6(3)(i).

AT&T responds that U S West's Iowa Tariff No. 4, Section 2.4.4A, contains the same language as AT&T's proposed tariff. AT&T will revise the tariff language if directed to by the Board, but AT&T asks that the Board require U S West to make the same changes, if any are required. (Response, pp. 4-5.)

U S West does not offer any further response on this issue.

The Board finds that AT&T's tariff language should be revised to comply with the applicable Board rules. The proposed tariff page that includes section 2.4.5, relating to interruption periods, is rejected. AT&T shall submit for Board review a revised tariff page complying with 199 IAC 22.6(3)"i." The revised language should be filed within 30 days of the date of this order.

As far as the U S West tariff is concerned, in the event of a conflict between a tariff provision and the Board's rules, the rules are generally controlling. Thus, if U S West's tariff purports to limit the definition in a more restrictive manner than the Board's rules, the tariff provision is ineffective in that respect. In these

circumstances, it is appropriate for U S West to file proposed revisions to its tariff to remove the conflict at this time.

d. Reciprocal pricing. (Section 17.2)

AT&T's original proposed tariff included a provision that if another LEC (or an affiliate of another LEC) charged rates to AT&T that are higher than the rates charged by AT&T to the LEC for the same or comparable services, AT&T could increase its rates to match those of that LEC. U S West objected that the language of the provision was garbled and that it created an asymmetrical competitive situation because AT&T's rates for access and interconnection could be higher than the rates of another LEC, but they could never be lower. (Objection, ¶ 7.)

AT&T replied that the language was sufficiently clear and that the provision was a reasonable means of creating a fair competitive situation, one that ensured AT&T charged at least the same rates to any other LEC as that LEC charged to AT&T. (Response, pp. 5-6.)

U S West replied that the provision was asymmetrical and unfair because it permitted AT&T's rates to be higher than the rates charged by the other LEC, but did not permit the other LEC's rates to be higher than AT&T's. (Reply, ¶¶ 9-11.)

This issue became moot on May 9, 2000, when AT&T filed amended proposed tariff pages removing the reciprocal compensation language from its tariff.

e. Point of interconnection. (Section 10.2.2)

AT&T's proposed tariff includes language that permits AT&T to designate points of interconnection at the company's end office and at any other reasonable point on the company's network. Other points of interconnection may be established by mutual agreement.

U S West objects that this language permits AT&T to unilaterally designate interconnection points. (Objection, ¶ 11.)

AT&T responds that the language is reasonable, not unduly beneficial to AT&T, and subject to the terms of any interconnection agreement that may apply in particular circumstances. (Response, p. 6.)

U S West replies that the language makes AT&T the final decision maker with respect to points of interconnection, rather than leaving the matter to negotiation. (Reply, ¶¶ 12-13.)

The Board considered this issue in the earlier interconnection arbitration proceedings and concluded the Federal act does not permit an ILEC to reserve the right to designate interconnection points. The Board finds AT&T should also be required to negotiate interconnection points, in order to promote economic allocation of network efficiencies. The proposed tariff pages that include section 10.2.2, defining "Points of Interconnection," are rejected. AT&T is directed to re-file the relevant tariff pages for Board review, with language providing for negotiated interconnection points, within 30 days of the date of this order.

f. Network Element Provided Access Service. (Sections 2.1.1G and 2.1.6A4)

AT&T proposed language disclaiming responsibility for facilities used to provide Network Element Provided Access Service (NEPAS). U S West objected. (Objection, ¶13.) In response, AT&T states that it does not currently provide NEPAS in Iowa, so it agrees to remove the section from the tariff. (Response, pp. 6-7.)

Accordingly, the proposed tariff pages that contain sections 2.1.1G and 2.1.6A4 of the tariff are rejected. AT&T will be required to file revised tariff pages, within 30 days of the date of this order, removing from its Iowa tariff the NEPAS provisions and all language disclaiming responsibility for services purchased from its tariff.

g. Presubscription/Dual PIC charges. (Section 13.4.1A)

U S West objects that AT&T's proposed tariff does not provide that only a single preferred interexchange carrier (PIC) charge will apply if a customer chooses their interLATA and intraLATA PIC at the same time. (Objection, ¶ 15.) AT&T states that it inadvertently omitted language from its tariff that would comply with Board requirements on this issue and it will submit revised tariff pages. (Response, p. 7.)

The proposed tariff pages that include section 13.4.1A are rejected. AT&T will be required to file for Board review revised tariff pages, within 30 days of the

date of this order, complying with the Board decision on this issue in Docket No. SPU-98-10.

h. PIC charge to IXC's that discontinue service. (Section 13.4.1B)

AT&T proposes to assess PIC change charges against any IXC that discontinues an intraLATA service offering, forcing customers to change to another IXC. U S West objects that the Board rejected a similar provision in U S West's tariff in Docket No. RPU-99-1 (TF-99-78). (Objection, ¶ 17.) If AT&T is permitted to implement this provision, U S West wants to do it, too.

AT&T responds that it was not aware the Board rejected this provision in the referenced docket because it was not specifically discussed in the Board's order, although AT&T admits the ordering clause clearly required removal of the provision. (Response, pp. 7-8.) Accordingly, AT&T asks the Board for clarification of the earlier order. If the Board intended that these provisions should not be included in LEC tariffs, then AT&T will remove it. (Id.)

In Docket No. RPU-99-1, the Board rejected the proposed U S West provision in part because it was inappropriate to include new tariff changes in the compliance tariffs when those changes that were not considered in the contested proceeding. That rationale for rejecting this provision would not apply to AT&T's proposed tariff, which is not a compliance tariff resulting from a contested proceeding.

However, since the Board issued its decision in Docket No. RPU-99-1, the Board has adopted rules relating to unauthorized changes in telephone service (slamming) which contain other provisions for this situation, provisions that are inconsistent with AT&T's proposal. Accordingly, the proposed tariff pages that include section 13.4.1B are rejected. AT&T is directed to file revised tariff pages, within 30 days of the date of this order, removing this section from its tariff.

IT IS THEREFORE ORDERED:

1. The proposed tariff pages that include the following tariff sections are rejected, for the reasons given in the body of this order:
 - a. Section 2.7, defining "access service:"
 - b. Section 2.4.5, relating to interruption periods;
 - c. Section 17.2, relating to reciprocal pricing;
 - d. Section 10.2.2, relating to designation of points of interconnection;
 - e. Sections 2.1.1G and 2.1.6A4, disclaiming responsibility for facilities used to provide Network Element Provided Access Services;
 - f. Section 13.4.1A, relating to dual PIC charges; and
 - g. Section 13.4.1B, relating to PIC charges for IXC's that discontinue an intraLATA service offering.

Within 30 days of the date of this order, AT&T shall submit for Board review new proposed tariff pages removing or containing revised language for each of the sections listed above, as described in the body of this order.

2. The remainder of AT&T's proposed access and network interconnection services tariff, filed as TF-99-163 and reviewed by the Board in Docket No. RPU-99-3 is approved, subject to complaint or investigation, effective as of the date of this order.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Judi K. Cooper
Executive Secretary, Deputy

/s/ Diane Munns

Dated at Des Moines, Iowa, this 12th day of June, 2000.